IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5913 OF 2004

Mr. Padmanabhan Krishnamurthy .. Applicant
V/s.
State of Maharashtra & Anr. .. Respondents

Mr. A.S. Khan with Mr. Harish Bohra i/b. M/s. A.S. Khan & Associates for the Applicant
Mr. Haresh Jagtiani, Sr. Advocate with Mr. Hitesh C. Dabhi i/b. M/s. Haresh Jagtiani & Associates for the Respondent No. 2
Mr. A.S. Shitole, APP. for the State

CORAM : V.M. KANADE, J.
DATED : 29TH APRIL, 2005

P.C.:-

1. Heard the learned counsel for the Applicant and the learned counsel for the Respondent. The Applicant is challenging the issuance of process by 23rd Metropolitan Magistrate, Esplanade, Mumbai. The complaint is filed by Respondent No. 2 under section 138 of the Negotiable Instruments Act.

2. It is submitted by the learned counsel for the Applicant that the Applicant had resigned from the Accused No. 1 Company on 21.11.1997 much before the cheque was issued on 14.10.1998. He has relied on the copy of Form No. 32, which is annexed at Exhibit B. It is submitted that the Applicant had resigned atleast one year before the date on which the cheque was issued and he was not liable to be prosecuted under the provisions of Negotiable Instruments Act. He submitted that objection is raised on the Form No. 32 being produced under section 610 of the Companies Act and section 79 to

the Evidence Act, about the genuineness of the said document. It is submitted that in view of this, process which was issued against the Applicant is liable to be quashed.

3. The learned counsel appearing on behalf of the Respondent vehemently opposed the statement made by the learned counsel for the Petitioner. He invited my attention to Exhibit B, which is copy of the Form 32 annexed to the Application. It is stated that there are certain discrepancies in the said document, which created doubt regarding the genuineness of the said document. He has stated that the date on the same, which is affixed by the Registrar of Companies is 8.10.1999 and that the filing fees, which is mentioned in the document shows that Rs. 120/- has been paid, however, in the stamp, which is affixed, certain other amounts have been mentioned. He submits that this creates doubt regarding the said document and he submitted that the Respondents are seriously contesting the genuineness of the said document. He submitted that the Applicant shall prove in the Trial Court after leading evidence that he was no longer a director on 21.11.1997.

4. It is further submitted that the present Criminal Application has been filed belatedly though the case was filed in 1998. Present application is filed almost after a lapse of 6 to 7 years. It is submitted that in number of judgments of this Court and also other Courts,

it is held that if there is a delay in challenging the issuance of process, the Petition is liable to be dismissed.

5. There are number of judgments on the question regarding the manner in which reliance has to be placed on the certified copy of Form 32, which is filed by a Director, who has resigned from the Company. Though there are number of judgments, which lay down on either side that in such cases, either the complaint has to be quashed and there are judgments stating that the matter has to be referred to the Trial Court for the purpose of leading evidence, the fact remains that ultimately there can not be any straight jacket formula for the purpose of deciding whether in which circumstances of case, the High court should interfere with the order of issuance of process. It appears that when it is claimed that the applicant was no longer a director, at the time when the cheques were issued, therefore, the facts would very from the facts and circumstances of each case. In the present case, firstly, the Respondent have seriously disputed the genuineness of the document, which is produced. The first page of the document shows that it is dated December 2000. On the second page, the same is fixed date 8.10.1999 has been affixed. It does appears to be some lacuna in this document and the Applicant ultimately will have to prove that the document, which he has produced, is a genuine document and not a false and fictitious document.

6. Under these circumstances, the Criminal Application is rejected. However, all the questions which are raised in this Application are kept open and the Applicant shall be entitled to rely on the questions and the judgments on which reliance is placed. The Trial Court shall decide this issue after evidence is adduced by the parties on merits and in accordance with law.

7. The Applicant is a Senior Citizen, 65 years old and is suffering from various ailments. In view of the recent judgment of the Supreme Court, it is not necessary in such cases, that the accused, should remain present on each and every date. The Trial Court is therefore, directed to grant exemption to the Applicant from appearing in the Trial Court on each and every date. The plea of the Applicant shall be recorded through his Advocate, unless it is absolutely necessary, the Magistrate may direct that the Applicant should remain present. The learned counsel appearing on behalf of the Applicant undertakes that he shall not dispute the identity of the present Applicant.

8. With these directions, Criminal Application disposed of. Trial Court is directed to decide the Criminal case as expeditiously as possible, in any case, within 8 months from today.

(V.M. KANADE, J.)